

ARGUMENT DOCKET ✓

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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KANAWHA COUNTY CIRCUIT COURT

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KEITH D. WITTERS, an individual;
EDWARD A. WOODS, an individual;
JOEL L. WOOTEN, an individual; and
PAUL E. YOUNG, JR., an individual,

Plaintiffs,

v.

CITY OF CHARLESTON, a West Virginia
Municipal Corporation,

Defendant.

Civil Action No. 12-Misc-119
Judge James C. Stucky

ORDER

On June 26, 2013, this matter came before the Court on joint motions of the plaintiffs and defendant (sometimes hereinafter the "City") for summary judgment and directed the parties to prepare and submit such findings of fact and conclusions of law for his review. Upon thorough review of the entire record, proceedings of this case, oral arguments of counsel, and applicable legal authority, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The plaintiffs are 162 shift firefighters in the Fire Suppression Division of the City's Fire Department and most are members of a related trade organization, Local 317 of the International Association of Firefighters ("Local 317"). (Pl.s' Memo. in Supp. of Mot. for Summ. J., May 28, 2013, 6.)
2. The plaintiffs were hired by the City at different times over a period stretching back several years through the present day, on terms and conditions of employment that are

largely governed by federal, state and local law, discretionary policy, and the Rules and Regulations of the Firemen's Civil Service Commission. (Pl.s' Compl., ¶ 4; Pl.s' Memo. in Supp. Mot. for Summ. J., 11.)

3. The plaintiffs are also paid a salary by the City based on wage progression schedules in the City's annual budget. (See Pl.s' Compl., Exs. 2, 3).
4. These salaries have historically been modified as a matter of fiscal responsibility and public policy, based on the City's financial condition and other factors. (Aff. J. Thomas Lane, Dec. 28, 2012, ¶¶ 9, 10.)
5. In conjunction with these salaries, the City awards annual vacation leave, which is time off without a reduction in paid salary, based upon each firefighters' years of service.
6. Firefighters with 15 years' of service or more are awarded more paid vacation leave than firefighters with less than 15 years' service.
7. From January 1991 to November 7, 2011, the City derived hourly rates for use in calculating overtime compensation by dividing the annual salaries of its firefighters by a certain number of hours for members with less than 15 years' service, and a different number of hours for members with 15 years' service or more. (Pl.s' Memo. in Supp. of Mot. for Summ. J., 8.)
8. The divisors used to calculate the hourly rate for purposes of overtime compensation were 2,412 hours for members with less than 15 years' service and 2,364 hours for members with 15 years' service or more for the period January 1991 through June 31, 1995. For the period July 1, 1995 through June 31, 1996, these divisors decreased to 2,344 hours for members with less than 15 years' service and 2,296 hours for members with 15 years' service or more. For the period February 1997 through November 2011,

these divisors decreased again to 2,272 hours for members with less than 15 years' service and 2,224 hours for members with 15 years' service or more. (Pls' Memo. in Supp. of Mot. for Summ. J., 9; Exs. 2-4.)

9. The calculations used by the City to arrive at these divisors historically excluded vacation hours, a practice which was supported by the City's interpretation of federal case law. See Aaron v. City of Wichita, 797 F.Supp. 898 (D.Kan. 1992).
10. However, in 2011, the City learned that the method of calculation in the Aaron case, namely the exclusion of vacations hours from the divisor, had been reversed and/or clarified. See Aaron v. City of Wichita, 54 F.3d 652 (10th Cir. 1995).
11. The City's application of the method of calculation in the Aaron case unnecessarily cost the City \$1.4 million in hourly and overtime wages that were not required under applicable FLSA standards over the past ten fiscal years.
12. The City took steps to implement a corrected method of calculation on November 7, 2011, through Resolution No. 037-11, which amended the City's 2011-12 annual budget. (Aff. J. Thomas Lane, ¶¶ 17-19.)
13. This corrected method of calculation, which included vacation hours in the divisor consistent with federal law, resulted in a reduction in the hourly rate used to calculate overtime compensation and is the unilateral modification of which the plaintiffs complain in this civil action. (Pls' Compl., ¶ 6.)
14. This corrected method of calculation did not serve to reduce the salaries paid to any firefighters based on the wage progression schedules in the City's annual budget.

15. The affidavits filed by the City and the plaintiffs in this matter demonstrate that there are no genuine issues as to any material facts and both parties agree that inquiry concerning the facts is not desirable to clarify the application of the law.

Conclusions of Law

16. "A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 1, Williams v. Precision Coil, Inc., 194 W.Va. 52, 459 S.E.2d 329 (1995); Syl. Pt. 2, Painter v. Peavy, 192 W.Va. 189, 451 S.E.2d 755 (1994).
17. When considering a motion for summary judgment, all underlying facts and inferences are to be viewed in the light most favorable to the nonmoving party. McKenzie v. Cherry River Coal & Coke, 195 W.Va. 742, 746, 466 S.E.2d 810 (1995).

I. Collins v. City of Bridgeport

18. An employer is permitted under West Virginia law to unilaterally change the terms and conditions of employment with reasonable notice. See Syl. Pt. 4, Hogue v. Cecil I. Walker Machinery Co., 189 W. Va. 348, 431 S.E.2d 687 (1993).
19. Although Hogue was a private-sector employer, this basic tenant of West Virginia employment law has specifically been applied to the calculation of overtime compensation for public-sector employees. See Collins v. City of Bridgeport, 206 W. Va. 467, 525 S.E.2d 658 (1999).
20. A municipal employer can unilaterally change the method of calculating overtime compensation for its employees. Collins v. City of Bridgeport, 206 W. Va. 467, 525 S.E.2d 658 (1999).

21. In Collins, the Supreme Court of Appeals addressed a similar claim made under similar factual circumstances to those presented by this matter. The City of Bridgeport had followed a longstanding employment practice of including holiday compensation in the calculation of overtime compensation for its police officers. Collins, 206 W.Va. at 475, 525 S.E.2d at 666. After nearly 20 years, the City of Bridgeport altered its policy such that police officers were not paid at an overtime rate until the actual hours worked exceeded the hours of compensation not worked during the applicable workweek. Id. The police officers objected to the new calculation and specifically argued that the city's longstanding method of calculating overtime compensation and the police officers' reliance on this practice had created a contract between the city and its police officers that could not be unilaterally modified by the city. Collins, 206 W.Va. at 475, 525 S.E.2d at 666.
22. The Supreme Court of Appeals expressly rejected these arguments and held that the City of Bridgeport was permitted to unilaterally modify its long-held employment practice of calculating overtime so long as it notified its employees of the change:
- We have also said, however, that; an employer may modify or revoke prior personnel manuals or policies that have created express or implied contract rights as to job security and establish in a subsequent personnel manual or policy that the employment is one at-will..... In the context of the present case, this means that the City of Bridgeport is permitted to revoke or alter its long-held policy concerning overtime pay provided it notifies its employees of the change.
- Collins, 206 W.Va. at 476, 525 S.E. 2d at 667.
23. This decision is controlling precedent with regard to the City of Charleston's correction of its method of calculation of overtime compensation.
24. The plaintiffs here have alleged that each of them "accepted an employment contract with the City which established a designated number of regular hours in the work week with a

stated annual salary, and established the number of regular work hours for the entire year.” (Pl.s’ Memo. in Supp. of Mot. For Summ. J., 6.)

25. This claim is entirely consistent with the claim made by the police officers in Collins that Bridgeport’s past practice of calculating overtime pay and the police officers’ reliance on the past practice had created a contract between the city and its police officers that could not be unilaterally modified. Collins, 206 W.Va. at 476, 525 S.E. 2d at 667
26. The police officers in Collins also asserted that the City of Bridgeport’s previous method of calculation of overtime compensation had given rise to property rights that could not be unilaterally altered. Collins, 206 W.Va. at 477, 525 S.E.2d at 668.
27. In response, the Supreme Court of Appeals specifically held that it was unaware of any statutes or local laws which granted a property interest in any certain method of calculation of overtime compensation. Collins, 206 W.Va. at 477, 525 S.E.2d at 668 (“[A] property interest does not normally arise from policies promulgated solely at the discretion of government officials.”); see also Hartman v. Board of Educ., 194 W.Va. 539, 460 S.E.2d 785 (1995).
28. Here, too, the plaintiffs have alleged that they have a liberty and property interest in their employment contracts generally, and in their hourly rate of pay specifically. (Pl.s’ Memo. in Supp. of Mot. for Summ. J., 20.)
29. However, in accordance with Collins, the City is permitted to unilaterally modify its employment policies and practices, including its method of calculating overtime compensation, so long as it notifies the plaintiffs of the change.
30. The City’s discretionary policies regarding the method of calculation of overtime compensation did not give rise to any property interests.

31. In this matter, the City lawfully passed Resolution No. 037-11 on November 7, 2011 following the requisite notice to the plaintiffs and the public at large. (Aff. J. Thomas Lane, ¶¶ 16, 19.)
32. The City's Finance Committee published its meeting agenda on Wednesday, November 2, 2011, in accordance with applicable law. Id at ¶ 16.
33. The resolution, titled "Authorizing the Finance Director to amend the FY 2011-2012 General Fund budget," was reviewed, discussed, debated and eventually passed by affirmative vote of a majority of the council members in attendance at the public meeting held on November 7, 2011. Id at ¶ 19.
34. The City clearly provided notice to the plaintiffs prior to correcting the method of calculation.
35. The rates of pay and means of compensation set forth in the municipal budgetary process are promulgated by the City of Charleston in its own discretion and in accordance with W.Va. Code § 8-5-12. (Aff. J. Thomas Lane, ¶¶ 9, 10.)
36. The City has always had the discretion and must, as a matter of necessity, retain the discretion to modify its policies for calculating the compensation for its employees.
37. So long as such calculations are made in accordance with applicable wage and hour laws and are implemented following reasonable and appropriate notice to the employees involved, the City may freely modify its discretionary employment practices.
38. Accordingly, the legal precedent in Collins dictates that the City's discretionary policies regarding the method of calculation of overtime compensation did not give rise to any contractual rights or property interests and the City can unilaterally modify its method of calculating overtime compensation.

II. No Evidence of Underlying Contract(s)

39. Viewing the underlying facts and inferences in a light most favorable to the plaintiffs, no evidence has been offered in support of the plaintiffs' underlying proposition that the City is contractually bound to calculate overtime compensation in a particular manner into perpetuity.
40. None of the plaintiffs' alleged individual employment contracts have been offered as evidence, and the terms and conditions of these alleged contracts are ambiguous at best.
41. For example, the plaintiffs sometimes assert that the alleged contracts are individual in nature, and that "[w]hen each of the [plaintiffs] were initially employed by the City, they all accepted an employment contract with the City, which established a designated number of regular hours in the work week with a stated annual salary, and established the number of regular work hours for the entire year." (Pl.s' Memo. in Supp. of Mot. for Summ. J., 6.)
42. However, at other times, the plaintiffs allege that the employment contract was negotiated by Local 317, despite the absence of any formal authority or collective bargaining agreement. (Pl.s' Memo. in Supp. of Mot. for Summ. J., 9, 18.)
43. While it is generally true that governmental agencies can meet with representatives of labor organizations to discuss terms and conditions of employment, there has not been any evidence offered to suggest that Local 317 was legally capable of negotiating an employment contract between the plaintiffs and the City.
44. In fact, just the opposite is true, and the plaintiffs concede that "there is no collective bargaining agreement in place." (Pl.s' Memo. in Supp. of Mot. for Summ. J., 13.) See also 51 Ops. Att'y Gen. 683 (1964-1966) (opining that, while public employees have the

right to join union organizations, "[t]he final determination of wages, hours, working conditions and the like, rests with the particular governmental unit and cannot be delegated away.")

45. In this matter, there has never been any collective bargaining agreement between the City and any collective bargaining unit. (Aff. J. Thomas Lane, ¶ 8.)

46. Absent such an agreement, the plaintiffs' allegation must be that each of the 162 firefighters has an individual contract with the City.

47. However, the plaintiffs' affidavits do not contain any mention of these alleged employment contracts. (Pls' Memo. in Supp. of Mot. for Summ. J., Exs. 2-4.)

48. The terms "contract" or "agreement" do not appear anywhere in the affidavits of Carl Beaver, Douglas Martin Legg or Eugene Earl Perry, Jr., nor do the affiants discuss any of the terms and conditions related to these alleged employment contracts. Id.

49. Instead, the plaintiffs' affidavits only serve to demonstrate the historical influence of Local 317 as a lobbying organization on behalf of the firefighters. Id.

50. Councilman Lane's affidavit generally agrees with the historical perspective in the plaintiffs' affidavits, which trace the City's history of discretionary changes to the terms and conditions of employment for its firefighters. (Aff. J. Thomas Lane, ¶¶ 13-17.)

51. Although the plaintiffs' affidavits are lacking in any mention or description of an employment contract between the City and its firefighters, Councilman Lane's affidavit is not lacking in that regard, and states as follows:

11. Any individual firefighter's contract would have had to have been authorized by a resolution or ordinance adopted by a majority vote of the City Council to be valid, and would have been limited in duration to the then-current budget year, and no resolution or ordinance of this nature has been considered during my tenure.¹

¹ J. Thomas Lane has served as a City Councilman for the Charleston City Council since 1987.

12. At no time has the existence of any contract containing an obligation on the part of the City to calculate hourly wages for the City's firefighters according to any particular methodology been brought to my attention or formally discussed, considered or approved by the City Council.

(Aff. J. Thomas Lane, ¶¶ 11-12.)

52. Councilman Lane's two affidavits clearly demonstrate that no contract "containing an obligation on the part of the City to calculate hourly wages for the City's firefighters according to any particular methodology" has been discussed, considered or approved by the City." (Aff. J. Thomas Lane, ¶ 12.)
53. In addition to the affidavits of Carl Beaver, Douglas Martin Legg and Eugene Earl Perry, Jr., the plaintiffs have included wage progression schedules, committee reports and station log books. (Pls' Memo. in Supp. of Mot. for Summ. J., Exs. 5-33.)
54. However, these exhibits are only indicative of the year-to-year exercise of the City's discretion with regard to the terms and conditions of employment for its firefighters and are not indicative of any contractual obligation on the part of the City.
55. Moreover, the plaintiffs' suggestion that the City has assumed some kind of perpetual obligation is factually impossible for another, more practical reason. To accept the plaintiffs' proposition would be to dictate that each new mayor and each new city council be bound by terms and conditions of employment established in January 1991.
56. In other words, the terms and conditions allegedly agreed to in 1991 would presumably apply to each new firefighter hired by the City, whether hired today, tomorrow, or on any date in the future - a plainly absurd and illegal notion.
57. Adopting plaintiffs' assertion that the City must forever pay its firefighters in a particular manner would force the City to violate the prohibition against expending money or

incurring obligations in excess of those funds available in the current budget. See W.Va. Code § 11-8-26; see also Edwards v. Hylbert, 146 W.Va. 1, 118 S.E.2d 347 (1960) (holding that no contract is valid which will bind the levies of future years, without authority from the people); 51 Op. Att'y Gen. 47 (1964) (opining that all local fiscal bodies, including municipalities, are forbidden from obligating funds available in future budgets).

58. The City's decision to modify its employment practices is also a matter of municipal law.
59. The City Council of the City of Charleston, as the governing body of the City, has the plenary power and authority to make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations not contrary to the constitution and laws of this state. See W.Va. Code § 8-11-1.
60. Article V, section 1 of the Constitution of West Virginia provides that "[t]he legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature." This constitutional provision prohibits any one department of government from exercising the powers of the others and is a fundamental law of our State. *State ex rel. State Building Comm. v. Bailey*, 151 W. Va. 79, 150 S.E.2d 449 (1966); *State v. Huber*, 129 W. Va. 198, 40 S.E.2d 11 (1946).
61. This provision limits the ability of this Court to substitute its own judgment into a matter of municipal discretion.

62. For these reasons, there is simply no evidence to support the plaintiff's underlying proposition that the City is contractually bound to perpetually calculate overtime compensation in a particular manner.

III. Aaron v. City of Wichita

63. The plaintiffs contend that the City's pre-2011 method of calculation predates the Aaron decision and, therefore, that the City has misstated its reliance on Aaron. (Pl.s' Memo. in Supp. of Mot. for Summ. J., 9.)

64. This argument is a *non sequitur* and has no bearing on the question posed in the plaintiff's Motion for Summary Judgment for at least two reasons.

65. First, the plaintiffs' contractual claim against the City does not depend, to any degree, on whether the City relied (or did not rely) on the Aaron decision.

66. Second, even though the City's historical method of calculation of overtime compensation pre-dated the Aaron decision, the fact remains that the City erroneously believed, until 2011, that Aaron prevented any change in its method of calculation. (Memo. in Supp. of Def.'s Mot. to Dismiss, Dec. 27, 2013, 3 n. 3.)

67. In short, any question as to the City's reliance on the Aaron decision is unrelated to the actual matter in dispute, namely the City's legal ability to unilaterally modify its method of calculating overtime compensation for its employees.

Conclusion

68. Based on the foregoing findings of fact and conclusions of law, no genuine issues of fact remain to be tried in this matter and inquiry concerning such facts is not desirable to clarify the application of the law cited herein.

69. Taking all of the underlying facts and inferences in the light most favorable to the plaintiffs, the plaintiffs' Motion for Summary Judgment is denied and the City's Motion for Summary Judgment must be granted.

WHEREFORE, the Court ORDERS that the City's Motion for Summary Judgment is hereby GRANTED. The Clerk of the Court shall send copies of this Order to all counsel of record.

Enter this Order the 7th day of October, 2013.

James C. Stucky
James C. Stucky, Judge
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF OCTOBER 2013
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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 CHARLES ANTHONY GREEN, an individual;)
 TIMOTHY J. GRIFFITH, an individual;)
 GRANT K. GUNNOE, JR., an individual;)
 BRADLEY A. HACKWORTH, an individual;)
 STEVEN B. HAGA, an individual;)
 JEREMY D. HAILE, an individual;)
 BRIAN E. HAMRICK, an individual;)
 SCOTT GLEN HARPER, an individual;)
 PAUL A. HARRISON, JR., an individual;)
 AARON C. HARTLEBEN, an individual;)
 TIMOTHY A. HARTWELL, an individual;)
 JOHN ERIC HASTINGS, an individual;)
 OWEN L. HAWK, II, an individual;)
 KEITH L. HAWK, an individual;)
 JOSHUA L. HENDERSON, an individual;)
 EDWIN M. HENTHORN, an individual;)
 WESLEY E. HILL, an individual;)
 DAVID ALLEN HODGES, an individual;)
 ALLEN CHARLES HOLDER, an individual;)
 SCOTT E. HOLMES, an individual;)
 CLARK D. HOLSTEIN, an individual;)
 JEFFREY S. JACKSON, an individual;)
 WALTER W. JOHNSON, JR., an individual;)
 GARRETT JOHNSON, an individual;)
 BRANDON J. JONES, an individual;)
 WILLIAM CHAD JONES, an individual;)
 JOSHUA M. KERNS, an individual;)
 BRENT KESSLER, an individual;)
 ROBERT E. KINSER, an individual;)
 ROBERT M. LANHAM, an individual;)
 SCOTT A. LEWIS, an individual;)
 CHARLES K. LILLY, an individual;)
 SHAWN S. LITTLE, an individual;)
 MATTHEW LIVELY, an individual;)
 BENJAMIN LOONEY, an individual;)
 ROBERT A. MACE, an individual;)
 TIMOTHY J. MANSHEIM, an individual;)
 DONNIE J. MATTHEWS, II, an individual;)
 CRAIG A. MATTHEWS, an individual;)
 SHANE M. MCCOMAS, an individual;)
 JEFFREY A. MCCOURT, an individual;)
 JASON L. MCCUTCHEON, an individual;)
 MARSHALL K. MCDANIEL, an individual;)
 SONNIE R. MEADOWS, an individual;)
 BRANDON MEALEY, an individual;)
 BRANDON C. MILLER, an individual;)
 CLARENCE D. MINGER, an individual;)

MATTHEW MONG, an individual;)
SHAWNE W. MONK, an individual;)
EDWARD E. MOORE, II, an individual;)
GREGORY W. MORRIS, an individual;)
MATTHEW TENNISON NESIUS, an individual;)
MATTHEW EDWARD NICHOLSON, an individual;)
KEITH E. OBRIEN, an individual;)
DEBRA K. OLS, an individual;)
STEVEN H. OSBORNE, an individual;)
RUSSELL A. PARSONS, II, an individual;)
RICHARD G. PARSONS, an individual;)
THOMAS PEAL, JR., an individual;)
RYAN PENNINGTON, an individual;)
FREDDIE W. PERDUE, II, an individual;)
CRAIG C. PERKINS, an individual;)
SETH J. PETERSEN, an individual;)
CALVIN L. PIERSON, an individual;)
LYDIA A. POTTORFF, an individual;)
WILLIAM J. PRICE, an individual;)
MICHAEL J. RHODES, an individual;)
MICHAEL R. ROBINSON, an individual;)
TIMOTHY A. ROBINSON, an individual;)
TIMOTHY TODD ROE, an individual;)
JAMES ALVIN ROUSH, II, an individual;)
WESLEY RUNYAN, an individual;)
JIMMY D. SADLER, JR., an individual;)
ALISHA D. SAMPLES, an individual;)
JOSEPH M. SCHAFER, an individual;)
STEPHEN A. SETTLE, an individual;)
PHILIP A. SHAFFER, an individual;)
SHAWN ERIC SHAFFER, an individual;)
MICHAEL E. SHANK, an individual;)
ROBERT S. SHARP, an individual;)
JEFFREY P. SHOWALTER, an individual;)
BENTE L. SIMERMAN, II, an individual;)
RICHARD W. SIMMONS, an individual;)
SAMUEL L. SIMPSON, an individual;)
BRETT SKAGGS, an individual;)
JONATHAN R. SMITH, an individual;)
MICHAEL DEAN SMITH, an individual;)
ROBERT L. SMITH, an individual;)
SHAWN SMITH, an individual;)
STERLING SMITH, an individual;)
JONATHAN SMOOT, an individual;)
CHAD SOICE, an individual;)
RALPH LEROY STATON, an individual;)
BRIAN K. STILTNER, an individual;)
KARL A. STRAUGHTER, an individual;)
MARK E. STRICKLAND, an individual;)
CLAYTON STUNKARD, an individual;)
ROBERT G. SUTLER, III, an individual;)

RICHARD L. SYMNS, an individual;
RYAN A. VAUGHN, an individual;
DAVID L. WAGONER, an individual;
SHAWN L. WANNER, an individual;
ANDREW WHITE, an individual;
RICHARD JASON WHITING, an individual;
JAMES D. WILCOX, an individual;
JOHN N. WILCOX, an individual;
KEITH D. WITTERS, an individual;
EDWARD A. WOODS, an individual;
JOEL L. WOOTE, an individual; and
PAUL E. YOUNG, JR., an individual;

Plaintiffs,

v.

CITY OF CHARLESTON, a West Virginia
Municipal Corporation,

Defendant.

Civil Action No. 12-Misc-119
Judge James C. Stucky

ORDER

This Court has reviewed the Plaintiffs' Motion to Revise, Alter or Amend Judgment under Rule 54(b) and 59(e) wherein Plaintiffs' seek relief from two of this Court's orders: (i) Order granting summary judgment to the Defendant City of Charleston dated October 7, 2013; and (ii) Order dismissing Mathew Jackson, Eric Kinder, and Victor E. Sigmon in their capacity as Commissioners of the Firemen's Civil Service Commission of the City of Charleston dated July 9, 2013.

Upon consideration of the Plaintiffs' motion, this Court does hereby ORDER that the Plaintiffs' Motion to Revise, Alter or Amend Judgment under Rule 54(b) and 59(e) be DENIED. The Clerk shall provide a certified copy of this Order to all counsel of record.

Enter this Order the 30th day of October, 2013.

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF OCTOBER 2013
Cathy S. Gatson, Clerk
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

James C. Stucky
Honorable James C. Stucky, Judge
Thirteenth Judicial Circuit